

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-58

In the Matter of

Amendment of Section 73.202(b), RM-8627
Table of Allotments,
FM Broadcast Stations.
(LaMesa and Tahoka, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 26, 1995; Released: May 3, 1995

Comment Date: June 26, 1995

Reply Comment Date: July 11, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by 100.3 Radio, Inc., licensee of Station KIOL(FM), Channel 262C1, LaMesa, Texas, and West Texas Broadcasting Company, Inc., licensee of Station KMMX(FM), Channel 284C1, LaMesa, Texas, ("petitioners"), requesting the reallocation of Channel 262C1 from LaMesa, Texas, to Tahoka, Texas, and the modification of Station KIOL(FM)'s license to specify Tahoka as its community of license.¹

2. Petitioners seek modification of Station KIOL(FM)'s license pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² Petitioners contend that the reallocation of Channel 262C1 from LaMesa (population 10,809) to Tahoka (population 2,868)³ will provide the community with its second local FM service, noting that Channel 237A at Tahoka is a vacant channel. Petitioners also state that removal of Channel 262C1 from LaMesa would leave the community with two stations, KMMX(FM), Channel 284C1 and Station KPET(AM). In

further support of their proposal, petitioners advise that Tahoka is the county seat of Lynn County and neither community is located within an urbanized area. Moreover, petitioners argue that the requested change of city of license for Channel 262C1 would eliminate an existing conflict between Stations KLZK(FM) [formerly KKTC(FM)] at Brownfield and KMMX(FM).⁴

3. We believe petitioners' proposal warrants consideration since it could provide Tahoka with an additional FM service, in this case an operating station, if granted. However, we expect petitioners to submit information describing the loss and gain area, the number of reception services that would serve the gain and loss area, and whether the gain and loss area will include any underserved areas. Petitioners are requested to submit information sufficient to address this issue. *See Change of Community MO&O, supra.* We also propose to modify petitioner's license for Station KIOL(FM) to specify Tahoka as its community of license. In compliance with Section 1.420(i), we will not accept competing expressions of interest in use of Channel 262C1 at Tahoka. Channel 262C1 can be allotted to Tahoka in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.2 kilometers (15.6 miles) north of Tahoka.⁵

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
LaMesa, Texas	262C1, 284C1	284C1
Tahoka, Texas	237A	237A, 262C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **June 26, 1995**, and reply comments on or before **July 11, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

¹ Petitioners also submitted an "Agreement", which has subsequently expired, outlining their plan to buy each other's stations at the termination of this proceeding. We believe that the agreement, whether currently enforceable, is irrelevant to this proceeding. Moreover, if petitioners believed the agreement constituted the required expression of interest, it did not satisfy that requirement, and before the requested reallocation can be accomplished, petitioners must submit the appropriate expression of interest.

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon.* granted in part ("Change of Community MO&O"), 5 FCC Rcd 7095 (1990).

³ All population figures are taken from the 1990 U.S. Census.

⁴ Petitioners state that they have been operating Stations

KIOL(FM) and KMMX(FM) at sites specified in their respective Special Temporary Authorities ("STA") since 1988. Since that time the Commission adopted a proposal to upgrade the facilities of Station KLZK(FM) at Brownfield, Texas, from Channel 280A to Channel 282C2. As a result of that action, KMMX(FM)'s proposal to operate on Channel 284C1 from its current STA site north of LaMesa is short-spaced by 49.4 kilometers to the allotment of Channel 282C2 at Brownfield. Even as a Class A facility, Station KLZK(FM) would still be 45.4 kilometers short-spaced to KMMX(FM)'s proposal. Petitioners submit that adoption of their resolution would clearly serve the public interest since it would permit KLZK(FM) to begin operations on Channel 282C2.

⁵ The coordinates for Channel 262C1 at Tahoka are North Latitude 33-23-00 and West Longitude 101-43-00.

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7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of

the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.